UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

PEARL INVESTMENTS, LLC,	)	
	)	
Plaintiff	)	
	)	
v.	)	
	)	
	)	
STANDARD I/O, INC. and JESSE CHUNN,	)	
	)	
	)	
Defendants	)	
	)	***Civil No. 02-50-P-H***
	)	***(PUBLIC VERSION)***
	)	
JESSE CHUNN,	)	
	)	
Third-Party Plaintiff	)	
	)	
v.	)	
	)	
DENNIS DAUDELIN,	)	
	)	
Third-Party Defendant	)	

RECOMMENDED DECISION ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Plaintiff Pearl Investments, LLC ("Pearl") and defendants Standard I/O, Inc. ("Standard") and Jesse Chunn (together, "Defendants") cross-move for summary judgment as to Counts I and V of Pearl's eight-count complaint, and the Defendants move for summary judgment as to the remaining counts, in this action arising from Standard's provision of custom computer programming to Pearl. Motion for Partial Summary Judgment of Liability on Counts I and V of the Complaint and for Summary Judgment on Counterclaims ("Plaintiff's S/J Motion") (Docket No. 19) (sealed) at 1;

Motion by Defendants/Counterclaimants for Summary Judgment, etc. ("Defendants' S/J Motion") (Docket No. 26) (sealed) at 1; Complaint, etc. ("Complaint") (Docket No. 1) at 1-2. In addition, Chunn, Pearl and third-party defendant Dennis Daudelin cross-move for summary judgment as to Count II of Chunn's four-count counterclaim/third-party complaint, and Pearl and Daudelin move for summary judgment as to the remaining two counts applicable to them (Counts I and IV). Plaintiff's S/J Motion at 1-2; Opposition by Defendants to Plaintiff's Motion for Partial Summary Judgment and Cross-Motion for Summary Judgment on Counterclaim Count II ("Defendants' S/J Opposition") (Docket No. 30) (sealed) at 1; Answer, Counterclaim and Third-Party Complaint, etc. ("Answer") (Docket No. 2) at 15-20 ("Counterclaim").[1] Chunn concedes Pearl's and Daudelin's entitlement to summary judgment as to Count IV of the Counterclaim. Defendants' S/J Opposition at 2. For the reasons that follow, I recommend that both motions be granted in part and denied in part.[2]

I. Summary Judgment Standards

Summary judgment is appropriate only if the record shows "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). "In this regard, 'material' means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant. By like token, 'genuine' means that 'the evidence about the fact is such that a reasonable jury could resolve the point in favor of the nonmoving party.'" *Navarro v. Pfizer*

[1] Count III of the Counterclaim pertains only to original third-party defendant A.B. Watley, Inc., whose motion to dismiss all third-party claims against it was granted. *See* Counterclaim ¶¶ 31-33; Order Affirming Recommended Decision of the Magistrate Judge (Docket No. 14).

[2] The Defendants request oral argument on their motion for summary judgment, suggesting that the court would be assisted by such a hearing in view of "the seriousness of this motion, its attempt to address numerous counts, and the underlying complexity of the subject matter[.]" *See* Docket No. 46. Pearl and Daudelin oppose the motion, stating that the matter is no more complex or serious than other civil disputes. *See* Docket No. 51. Inasmuch as the parties' papers (*continued on next page*)

Corp., 261 F.3d 90, 93-94 (1st Cir. 2001) (quoting *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995)).

The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In determining whether this burden is met, the court must view the record in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences in its favor. *Nicolo v. Philip Morris, Inc.*, 201 F.3d 29, 33 (1st Cir. 2000). Once the moving party has made a preliminary showing that no genuine issue of material fact exists, the nonmovant must "produce specific facts, in suitable evidentiary form, to establish the presence of a trialworthy issue." *Triangle Trading Co. v. Robroy Indus., Inc.*, 200 F.3d 1, 2 (1st Cir. 1999) (citation and internal punctuation omitted); Fed. R. Civ. P. 56(e). "As to any essential factual element of its claim on which the nonmovant would bear the burden of proof at trial, its failure to come forward with sufficient evidence to generate a trialworthy issue warrants summary judgment to the moving party." *In re Spigel*, 260 F.3d 27, 31 (1st Cir. 2001) (citation and internal punctuation omitted).

To the extent that parties cross-move for summary judgment, the court must draw all reasonable inferences against granting summary judgment to determine whether there are genuine issues of material fact to be tried. *Continental Grain Co. v. Puerto Rico Maritime Shipping Auth.*, 972 F.2d 426, 429 (1st Cir. 1992). If there are any genuine issues of material fact, both motions must be denied as to the affected issue or issues of law; if not, one party is entitled to judgment as a matter of law. 10A C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 2720, at 336-37 (1998).

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provide a sufficient basis on which to decide the motion, the Defendants' request for oral argument is denied.

II. Factual Context

The parties' statements of material facts, credited to the extent either admitted or supported by record citations in accordance with Local Rule 56, reveal the following relevant to this recommended decision:[3]

[REDACTED]

III. Analysis

[REDACTED]

IV. Conclusion

For the foregoing reasons, I recommend that the Plaintiff's S/J Motion be **GRANTED** as to Counts I and IV of the Counterclaim and otherwise **DENIED**, and that the Defendants' S/J Motion be **GRANTED** with respect to (i) Standard, as to Counts I and III of the Complaint; (ii) Chunn, as to Count I of the Complaint to the extent the claimed violation of the UTSA is predicated on the existence of GUIDs on the Chunn HDD; (iii) both Standard and Chunn, as to Counts II, IV, VII and VIII of the Complaint and that portion of Count VI of the Complaint asserting violation of an implied warranty/services; and (iii) Count II of the Counterclaim; and otherwise **DENIED**.

Should this recommended decision be adopted, remaining for trial will be the following: Count I of the Complaint (misappropriation of trade secrets) against Chunn only, with the caveat that Pearl be precluded from premising any such claim on contents found on the HDD; Count III of the

[3] Inasmuch as the facts adduced in connection with the Plaintiff's S/J Motion are largely coextensive with those adduced in connection with the Defendants' S/J Motion, for ease of reference I have melded the two into a unified record.

Complaint (violation of the DMCA) against Chunn only; Count V of the Complaint (breach of contract) against both Standard and Chunn; Count VI of the Complaint (breach of warranty/services) against both Standard and Chunn, to the extent asserting breach of express warranty only; and Count II of the Counterclaim, with respect only to the amount of damages to be awarded Chunn.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum and request for oral argument before the district judge, if any is sought, within ten (10) days after being served with a copy thereof. A responsive memorandum and any request for oral argument before the district judge shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 21st day of March, 2003.

David M. Cohen
United States Magistrate Judge

Plaintiff

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V.

ThirdParty Defendant

DENNIS DAUDELIN represented by **TODD S. HOLBROOK**
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V.

Counter Defendant

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